

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

TRANS-EAGLE CORPORATION,
Debtor.

Case No. 96-53513-JRG
Chapter 7

SUZANNE L. DECKER, Trustee,
Plaintiff,

Adversary No. 96-5381

vs.

**ORDER GRANTING MOTION TO
SEVER CLAIMS FOR DECEIT AND
CONVERSION AND DENYING MOTION
TO SEVER CLAIM FOR LIEN
DETERMINATION**

JERRY LIU, SYNnex,
INFORMATION TECHNOLOGIES,
INC., A.C.T. COMPUTERS, INC.,
PACIFIC BUSINESS FUNDING
CORP., SUPERCOM, INC., and C.
KEVIN CHUANG,
Defendant.

I. INTRODUCTION

The plaintiff filed a motion seeking to sever and try separately the first, seventh and eighth claims for relief in the Second Amended Complaint. Synnex does not oppose severance of the first claim for relief to determine extent, validity and priority of liens. However, Synnex does oppose the severance of the seventh and eighth claims. Those claims are for deceit and

1 conversion.

2 Plaintiff requested a severance of the seventh and eighth
3 claims for relief on the basis that Synnex has requested a jury
4 trial as to those claims. However, Synnex has timely requested
5 a jury trial on all claims in the complaint. Thus, the court
6 must first examine Synnex's right to a jury trial on the various
7 claims before the court can decide this motion to sever. For
8 the reasons hereafter set forth, the court will grant the motion
9 as to the claims for deceit and conversion.

10 **II. SYNnex HAS A RIGHT TO A JURY TRIAL ON CERTAIN CLAIMS ABSENT**
11 **ANY WAIVER OF THAT RIGHT**

12 Where the right to a jury trial is disputed, the court must
13 initially determine whether the party seeking a trial by jury
14 has such a right under the Seventh Amendment. Granfinanciera,
15 S.A. v. Nordberg, 492 U.S. 33, 41-42, 109 S.Ct. 2782, 2790
16 (1989); Local Rule 700-7(a); 5 Moore's Federal Practice ¶
17 38.11[1]. The right is determined by a three-part test. First,
18 the court must determine if there would have been a right to a
19 jury trial in 18th-century England. Granfinanciera, 109 S.Ct. at
20 2790. Second, the court must decide whether the matter should
21 be characterized as legal rather than equitable. Id. Finally,
22 the court must determine whether the matter involves private
23 rights, as opposed to public rights. Id. All three factors must
24 be present in order for there to be a Seventh Amendment right to
25 a jury trial.

26 The following claims for relief remain in the Second
27
28

Amended Complaint¹:

1. Claim to determine extent, validity and priority of liens (lien determination),
2. Avoidance and recovery of preferential transfers to Synnex (preference claim),
3. Deceit,
4. Conversion,
5. Equitable subordination,
6. Damages for willful violation of the automatic stay under 11 U.S.C. § 105 (stay violation),
7. Sanctions for violation of Rules 9011 and 7026 of the Federal Rules of Bankruptcy Procedure (sanction claim).

With respect to the first prong of the test, the court finds that there was clearly a right to a jury trial in 18th-century England for the lien determination, preference, deceit and conversion claims. Under the Federal Rules, a jury trial is also required in those suits that are analogous to "suits at common law." In contrast, those actions that are analogous to 18th-century cases tried in courts of equity do not require a jury trial. 8 Moore's Federal Practice § 38.10[3][a] (3rd ed. 1998) citing Tull v. United States, 481 U.S. 412 (1987). Hence, no right to a jury trial existed in 18th-century England for equitable subordination, a suit in equity.

However, whether there was an analogous right to a jury trial in 18th-century England for claims such as the stay

¹ The Second Amended Complaint filed November 2, 1997 originally contained fifteen claims for relief. Many of those claims have since been disposed of. Nine claims remain in the complaint. Two of those nine claims the trustee has offered to dismiss and is in the process of obtaining an order of dismissal. (Those are the eleventh and fifteenth claims for relief for cancellation of the security agreement and abuse of process.) Thus, seven claims for relief remain at this time. This order will address those seven remaining claims.

1 violation claim brought under § 105 and for sanctions sought
2 under Rules 9011 and 7026 is not as clear. The case of Atlas
3 Roofing Co. v. OSHRC is helpful in determining what actions are
4 analogous to cases tried in equity which do not require a jury
5 trial. In Atlas Roofing, the U.S. Supreme Court held that the
6 Occupational Safety and Health Act did not violate the Seventh
7 Amendment by allowing a review commission to levy civil
8 penalties against employers violating the Act. Atlas Roofing
9 Co. v. OSHRC, 430 U.S. 442, 456-57 (1977). The claims for
10 damages and sanctions for violation of provisions of the
11 Bankruptcy Code and Federal Rules of Bankruptcy Procedure are
12 similar to levies of civil penalties for violations of statutes
13 and are akin to suits in equity. Thus, the court finds that
14 there was not a right to a jury trial on the stay violation and
15 sanctions claims in 18th-century England.

16 With respect to the second prong of the test, of the four
17 claims which satisfied the first prong, the court finds that
18 three claims— for preference, deceit and conversion— are legal
19 rather than equitable in nature, as money damages are the sole
20 remedy requested by the trustee. The court finds that the lien
21 determination claim is equitable, rather than legal in nature.
22 Determination of the validity of liens is a fundamental
23 bankruptcy matter that has been delegated by Congress to the
24 bankruptcy courts for adjudication. Caruthers v. Fleet Finance,
25 Inc., 87 B.R. 723, 726 (Bankr. N.D.Ga. 1988). Such
26 determination directly affects the prompt and effectual
27 administration of the estate and the debtor's "fresh start."
28

1 Id. As such, it is a matter over which this court exercises
2 exclusive control as a court of equity. Id.

3 As for the third prong of the test, of the three claims
4 which satisfied the first and second prongs, the court finds
5 that all the claims – for preference, deceit and conversion –
6 involve private rights rather than public rights. The U.S.
7 Supreme Court has not defined "public rights" but has defined
8 "private rights" as "the liability of one individual to another
9 under the law... in contrast to cases... aris[ing] between the
10 Government and persons subject to its authority in connection
11 with the performance of the constitutional functions of the
12 executive or legislative departments." See Granfinanciera,
13 S.A. v. Nordberg, 492 U.S. 33, 51 (n.8) (citing Crowell v.
14 Benson, 285 U.S. 22 (1932)). Determination of the claims for
15 preference, deceit and conversion will determine the liability
16 of one individual to another under the law, and not the rights
17 between the government and an individual. Thus, the court finds
18 that the preference, deceit and conversion claims are all
19 private rights. Under the three-prong test of Granfinanciera,
20 Synnex has a Seventh Amendment right to a jury trial on only the
21 preference, deceit and conversion claims.

22 **III. SYNnex HAS WAIVED ITS RIGHT TO A JURY TRIAL AS TO THE**
23 **PREFERENCE CLAIM**

24 It is clear that Synnex has waived its Seventh Amendment
25 right to a jury trial for the preference claim by filing a proof
26 of claim. In Langenkamp v. Culp, the U.S. Supreme Court held
27 that while a defendant in a preference action has a right to a
28 jury trial if it does not file a proof of claim, when it does

1 file a proof of claim, it submits itself to the equitable
2 jurisdiction of the bankruptcy court and there is no Seventh
3 Amendment right to a jury trial. Langenkamp v. Culp, 498 U.S.
4 42 (1990), reh'g denied, 498 U.S. 1043 (1991).

5 The next question is whether Synnex has waived its right to
6 a jury trial as to the remaining claims for deceit and
7 conversion. The actions underlying the trustee's complaint
8 alleging that Synnex concealed material facts and lied in regard
9 to its claim can be summarized as follows: Synnex caused a
10 security agreement to be executed after the bankruptcy petition
11 was filed. Synnex back-dated the security agreement to a pre-
12 petition date. Synnex then enforced the security agreement by
13 moving for relief from the stay and obtained property of the
14 estate. Trustee argues that Synnex has waived its right to a
15 jury trial on all claims by filing a proof of claim and
16 submitting to the equitable jurisdiction of the bankruptcy
17 court. Synnex argues that it has not waived its right to a jury
18 trial by filing a proof of claim because the claims are not part
19 of the claims-allowance process. Thus, the issue is whether
20 each of the claims are part of the claims-allowance process.

21 Germain v. Connecticut National Bank, 988 F.2d 1323 (2d
22 Cir. 1993) is instructive. In Germain, the Court of Appeals
23 held that a creditor, by filing a proof of claim in bankruptcy,
24 forsakes its rights to adjudicate before a jury on any issue
25 that bears directly on allowance of that claim. In Germain, the
26 right to a jury trial was not waived by the filing of a proof of
27 claim because the trustee's claims had nothing to do with the
28

1 essence of the bankruptcy regulatory scheme of allowing or
2 reordering claims. The trustee's claims were really lender
3 liability claims for tortuous interference with the debtor's
4 business, coercion and duress, breach of contractual duty of
5 good faith, unfair or deceptive business practices, and
6 misrepresentation. The underlying suit alleged essentially that
7 the bank used its power as the debtor's primary lender to
8 exercise control of the debtor to its detriment. The bank
9 recommended to the debtor's principle stockholder that the
10 debtor file a voluntary bankruptcy petition. After the petition
11 was filed, among other things, the bank allegedly threatened to
12 terminate post-petition financing and threatened to convert the
13 case from Chapter 11 to Chapter 7. Ultimately, the debtor's
14 business was destroyed.

15 The Court of Appeals stated that the very phrase "claims-
16 allowance process" suggests that the resolution of the dispute
17 in which a jury trial is sought must affect the allowance of the
18 creditor's claim in order to be part of that process. Germain,
19 988 F.2d at 1327. Suits which augment the estate but which have
20 no effect on the allowance of a creditor's claim simply cannot
21 be part of the claims-allowance process. Id. at 1327. The bank
22 argued that the substance of the complaint raised bankruptcy law
23 issues regarding, for example, the automatic stay and procedures
24 for converting a case from Chapter 11 to Chapter 7. Id. at
25 1328. The court stated that while Bankruptcy Code provisions
26 may be implicated, the essence of the allegations is that the
27 bank's actions were inconsistent with its role as the debtor's
28

1 primary lender and that as a consequence the debtor's business
2 was destroyed. Id. The court stated that the trustee's action
3 was quintessentially a suit at common law that more nearly
4 resembled state law contract and tort claims brought by a
5 bankrupt corporation to augment the estate than it does
6 creditor's hierarchically ordered claims to a pro rata share of
7 the bankruptcy res. Id.

8 In this case, the trustee argues that if the court finds
9 that Synnex committed deceit and conversion, Synnex's claim will
10 be equitably subordinated to all other claims against the
11 estate. Hence, the trustee argues that because the claims may
12 effect the reordering of the claims, the claims are part of the
13 claims-allowance process. The trustee also points out that the
14 entire dispute arose out of the claims process when Synnex
15 attempted to participate in the estate by asserting a false
16 secured claim. Further, the claims all relate to post-petition
17 wrongdoings against the bankruptcy estate. Moreover, the
18 conversion claim is within the context of obtaining relief from
19 the automatic stay during the bankruptcy.

20 However, the resolution of the dispute does not affect the
21 allowance of Synnex's claim, only its priority. Synnex has a
22 general unsecured claim whether or not the trustee prevails.
23 If the trustee prevails, the claim may be subordinated. Whether
24 a general unsecured claim which is subordinated to all other
25 claims will eventually be paid a dividend from the bankruptcy
26 estate is another matter which does not bear on the actual
27 allowance of the claim. In addition, the deceit and conversion
28

1 claims more nearly resemble state law tort claims than claims to
2 a pro rata share of the bankruptcy res. While bankruptcy
3 provisions may be implicated, the essence of the allegations is
4 that Synnex's actions were deceitful and that as a consequence
5 the debtor has been injured. The claims-allowance process is
6 only affected if the equitable subordination relief is imposed
7 against Synnex. Thus, the claims for deceit and conversion do
8 not bear directly on allowance of Synnex's claim and Synnex has
9 not waived its right to a jury trial on those claims. In
10 conclusion, Synnex has a right to a jury trial on the claims for
11 deceit and conversion.

12 **IV. TRUSTEE'S MOTION TO SEVER**

13 The trustee requested that the court sever the first (lien
14 determination), seventh (deceit) and eighth (conversion) claims.
15 The trustee argued that he would have to retain special counsel
16 to try the seventh and eighth claims before a jury and it would
17 add to the expense to have special counsel try the non-jury
18 claims as well. The trustee also argued that severance will
19 expedite the prosecution of the jury trial claims. Now that the
20 court has determined that Synnex does have a right to a jury
21 trial on the deceit and conversion claims, the trustee's
22 arguments for severance are well taken. Thus, for the
23 foregoing reasons the motion to sever the claims for deceit and
24 conversion is granted.

25 As for the trustee's request to sever the first claim for
26 relief, the lien determination claim, the court cannot make a
27 determination at this time. After the filing of this motion to
28

1 sever, Synnex and the trustee entered into a Stipulation Re
2 Motion for Summary Judgment. The stipulation specifically
3 addresses the lien determination claim. In connection with the
4 various motions the court has ruled concurrently with issuing
5 this order, the court has issued an Order Setting Case
6 Management Conference and Hearing to Reconsider Approval of
7 Stipulation. Thus, without knowing the status of the lien
8 determination claim, the court cannot make a determination on
9 the motion to sever the claim at this time. The motion to sever
10 the first claim for lien determination is denied without
11 prejudice to the trustee bringing the motion again once the
12 status of the claim is settled.

13 **V. CONCLUSION**

14 Thus, the court finds that Synnex is entitled to a jury
15 trial for the claims for deceit and conversion. The court
16 hereby grants the trustee's motion to sever the claims for
17 deceit and conversion and denies the motion to sever the claim
18 for lien determination.
19
20
21
22
23
24
25
26
27
28